

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>1. MARCELLA M. SMITH,</b>	)	
	)	
<b>2. LARRY D. SMITH,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Tulsa County District Court Case</b>
<b>vs.</b>	)	<b>No.: CJ-2010-4513</b>
	)	
<b>1. ACE AMERICAN INSURANCE</b>	)	
<b>COMPANY,</b>	)	
	)	
<b>2. ASSOCIATED WHOLESALE</b>	)	
<b>GROCERS, INC.,</b>	)	
	)	
<b>3. NATIONAL LIABILITY AND FIRE</b>	)	<b>United States District Court</b>
<b>INSURANCE CO.,</b>	)	<b>Case No.: 4:10-cv-523</b>
	)	<b>Judge James Payne</b>
<b>4. G.D. TRANSPORT, INC.,</b>	)	<b>Magistrate Frank McCarthy</b>
	)	
<b>5. DONALD L. CREED,</b>	)	
	)	
<b>6. RAJEEV SHARMA,</b>	)	
	)	
<b>7. ERIN ALF,</b>	)	
	)	
<b>Defendants.</b>	)	

**NOTICE OF REMOVAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Title 28 U.S.C. §§ 1441 and 1446, the Defendants Ace American Insurance Company, Associated Wholesale Grocers, Inc. and Donald Creed (“Defendants”), submit their Notice of Removal of Action and in support hereof would show the Court as follows:

1. The above-captioned matter is a civil action currently pending in Tulsa County District Court, State of Oklahoma. *See* Pls.' Pet., attached as Exhibit "1."<sup>1</sup> The aforesaid civil lawsuit falls within this Court's original jurisdiction pursuant to Title 28 U.S.C. § 1332. Accordingly, it can be removed to this Court by the Defendants pursuant to the provisions of Title 28 U.S.C. § 1441, because it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. On July 21, 2010, the Plaintiffs commenced a civil action in the District Court in and for Tulsa County, State of Oklahoma, captioned as: *MARCELLA M. SMITH and LARRY D. SMITH, Plaintiffs, vs. ACE AMERICAN INSURANCE COMPANY, ASSOCIATED WHOLESALE GROCERS, INC., NATIONAL LIABILITY AND FIRE INSURANCE CO., G.D. TRANSPORT, INC., DONALD L. CREED, RAJEEV SHARMA and ERIN ALF, Defendants. See* Pls.' Pet. at 1.

3. The Plaintiffs' lawsuit against the Defendants sounds in negligence and seeks the recovery of damages in connection with injuries allegedly caused on June 26, 2009, by the acts and/or omissions of the Defendants referable to the operation of motor vehicles on an Oklahoma interstate turnpike. *Id.* at 3, ¶¶ 9-11; 4, ¶¶ 13-14; and *in toto*.

4. As of the date of this *Notice of Removal*, Ace American Insurance Company, Associated Wholesale Grocers, Inc., Donald Creed, National Liability and Fire Insurance Co. and Erin Alf are the only Defendants that have been served with process in this matter. *See* Summons & Returns, attached as Exhibits "2" thru "6." *Cf.* State Court Docket for CJ-2010-4513, attached as Exhibit "7." Non-served, nonresident defendants

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<sup>1</sup> As required by Title 28 U.S.C. § 1446(a) and the Local Court Rules, the Defendants have also attached as exhibits hereto copies of the State Court docket and related documents referable to the State Court action against the removing Defendants. *See* Exhibits "1" through "10," attached hereto.

need not join in this *Notice of Removal* in order for removal of this matter to be effectuated. *See McCurtain County Production Corp. v. Cowett*, 482 F.Supp. 809, 813 (E.D.Okla.1978), *citing DiCesare-Engler Productions, Inc. v. Mainman Ltd.*, 421 F.Supp. 116 (W.D.Pa.1976). *See also Howard v. George*, 395 F.Supp. 1079 (S.D.Ohio1975), *citing* 1A Moore's Federal Practice P 0.168(3.-2) at 1171 (1965). Defendants Alf and National Liability and Fire Insurance Co. consent to the removal of this matter. *See* Consents, attached as Exhibits "8" & "9."

5. In their State Court Petition, the Plaintiffs generally set forth a prayer for recovery of damages from the Defendants in excess of the State Court jurisdictional amount of \$10,000.00, but did not allege that the damages sought as to any specific Defendant exceeded \$75,000.00. *See* Pls.' Pet. at 8, attached as Exhibit "1."

6. On August 10, 2010, counsel for the Plaintiffs confirmed the amount in controversy per each Plaintiff exceeds \$75,000.00. *See* August 11, 2010 Letter, attached as Exhibit "10." The Plaintiffs have been advised of the Defendants' intent to remove this matter from State Court to Federal Court. *Id.*

7. As to the question of diversity between the parties, the Plaintiffs' Petition itself establishes that none of the Plaintiffs hale from the same jurisdiction as any of the Defendants. *See* Pls.' Pet. at 1, ¶¶1-2; 2, ¶¶3-8, attached as Exhibit "1." The Plaintiffs plead that they are both "residents of Tulsa, Tulsa County, Oklahoma, and at the time of the accident herein were residents of Tulsa, Tulsa County, Oklahoma." *Id.* at 1, ¶1. The Plaintiffs also aver that Defendant Ace American Insurance Company is from Pennsylvania; that Defendant Associate Wholesale Grocers, Inc. is a Kansas corporation; that Defendant National Liability and Fire Insurance Company is domiciled in Connecticut with its headquarters in Nebraska; that Defendant G.D. Transport is from California; that Defendant Donald Creed is from Missouri; that Defendant Rajeev

Sharma is from California; and that Defendant Erin Alf is a citizen of Texas. *Id.* at 1, ¶2 and 2, ¶¶3-8.

8. As established by the State Court Petition, there is complete diversity of citizenship between the Plaintiffs and all of the Defendants, such that this matter can and should be removed to Federal Court. *Id. in toto.* The Defendants respectfully request as much.

9. The Defendants, upon filing this Notice of Removal, are filing a copy of this document with the Clerk of the District Court in and for Tulsa County, State of Oklahoma, which has effected this removal in accordance with Title 28 U.S.C. § 1446(d) and will not proceed any further until otherwise authorized to do so.

WHEREFORE, premises considered, the Defendants, Ace American Insurance Company, Associated Wholesale Grocers, Inc. and Donald Creed, respectfully request this Court to SUSTAIN their Notice of Removal, and for all other relief the Court deems just and equitable.

Respectfully submitted,

s/John D. Bogatko  
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-and-

s/Robert Coffey  
*(Signed by Filing Attorney with  
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**Certificate of Service**

I hereby certify that on August 16, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

Kathryn A. Herwig / Darrell E. Williams  
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s/John D. Bogatko